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MEMORANDUM

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AZ CORP COMMISSION
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FROM: Steven M. Olea
Director
Utilities Division

ORIGINAL

DATE: September 11, 2014

RE: IN THE MATTER OF THE APPLICATION OF VOXBEAM
TELECOMMUNICATIONS, INC. DBA AS MAGIC TELECOM FOR APPROVAL
OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD LONG DISTANCE AND FACILITIES-BASED LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES (DOCKET NO. T-20900A-13-0423)

Attached is the Staff Report for the above Application requesting approval for a Certificate of Convenience and Necessity ("CC&N") to provide the following services:

- Resold Long Distance Telecommunications Services
- Facilities-Based Local Exchange Telecommunications Services

Staff is recommending approval of the Application with conditions.

SMO:PJG:tdp\ML

Originator: Pamela J. Genung

Arizona Corporation Commission

DOCKETED

SEP 11 2014

DOCKETED BY

SERVICE LIST FOR: VOXBEAM TELECOMMUNICATIONS, INC.
DOCKET NO.: T-20900A-13-0423

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

VOXBEAM TELECOMMUNICATIONS, INC.

DOCKET NO. T-20900A-13-0423

IN THE MATTER OF THE APPLICATION OF VOXBEAM TELECOMMUNICATIONS,
INC. DBA AS MAGIC TELECOM FOR APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE AND
FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

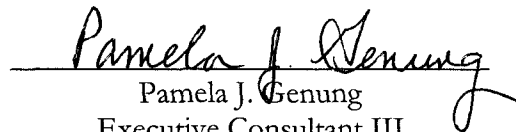
SEPTEMBER 11, 2014

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STAFF ACKNOWLEDGMENT

The Staff Report for Voxbeam Telecommunications, Inc. d/b/a Magic Telecom, Docket No. T-20900A-13-0423, was the responsibility of the Staff member listed below. Pamela J. Genung was responsible for the review and analysis of the Applicant's application for a Certificate of Convenience and Necessity to provide Resold Long Distance and Facilities-Based Local Exchange Telecommunications Services within the State of Arizona, in addition to the petition for a determination that its proposed services should be classified as competitive.


Pamela J. Genung
Executive Consultant III

1. INTRODUCTION

On December 6, 2013, Voxbeam Telecommunications, Inc. d/b/a Magic Telecom ("Voxbeam" or "Applicant" or "Company") filed an application and proposed tariffs for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance and facilities-based local exchange telecommunications services within the State of Arizona. The Applicant also petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

On February 6, 2014, Staff issued its First Set of Data Requests to Voxbeam. Responses to Staff's First Set of Data Requests were received from the Applicant on March 24, 2014. On May 22, 2014, Staff issued its Second Set of Data Requests. Responses to Staff's Second Set of Data Requests and five (5) replacement tariff pages were received from Voxbeam on June 27, 2014.

Staff's review of this Application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Voxbeam, founded in 2010, is a foreign corporation organized under the laws of the State of Florida. Voxbeam's headquarters is located at 7450 Dr. Phillips Boulevard, Orlando, Florida 32819. The Applicant intends to provide service in Arizona under the name of Magic Telecom.

The Applicant has authority to provide local exchange and interexchange services in twenty-one (21)¹ States/Jurisdictions. Voxbeam is currently operating in New York. Staff contacted the Public Utility Commissions in eleven (11) States to determine if Voxbeam is certificated or registered to provide competitive local exchange and interexchange telecommunications services in the States/Jurisdictions listed by the Applicant. Staff also inquired whether there were any consumer complaints filed against the Applicant. The information Staff obtained indicates that Voxbeam is authorized to provide local exchange and interexchange services in at least seven (7) of the States/Jurisdictions contacted by Staff and no consumer complaints have been filed against the Company.

Voxbeam intends to offer telecommunications services to wholesale customers and medium size business customers. Its services will rely on Voice over Internet Protocol ("VoIP") technology. Voxbeam indicated that it currently has switches in Virginia and New York that it intends to use to handle Arizona subscriber traffic. The Company will interconnect its facilities with those of CenturyLink for the provision of local services. Voxbeam stated that it may also lease services and facilities from other carriers operating in Arizona but has not identified those specific carriers at this time.

¹ California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Massachusetts, Maryland, Michigan, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, and Wisconsin.

Voxbeam and its affiliates currently have forty (40) employees. Voxbeam does not plan, at this time, to have employees in Arizona. The three (3) officers/key personnel of Voxbeam average eleven years' experience each in the telecommunications industry.

Voxbeam plans to handle all customer service through its headquarters in Orlando, Florida. The Company currently maintains a toll-free customer service number of (866) 384-1860 between the hours of 9:00am and 5:30pm Eastern Standard Time to address service, billing, and repair complaints or via email at cs@voxbeam.com. Email support is available 24/7. In addition, within the next six (6) months Voxbeam will be expanding its phone service support to 24/7.

Based on the above information, Staff believes Voxbeam possesses the technical capabilities to provide the services it is requesting the authority to provide in Arizona.

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

On May 14, 2014, a confidentiality agreement was signed by the Applicant and Staff. On July 7, 2014 and July 8, 2014, Voxbeam provided unaudited financial statements for years ending 2013 and 2012, respectively. The financial statements for year ending 2013 list total assets of \$1,537,576, total equity of negative \$128,426 and net income of \$223,893. The financial statements for year ending 2012 list total assets of \$617,703, total equity of negative \$352,318, and net income of \$112,583. The Applicant provided notes related to its financial statements indicating that Voxbeam is a subsidiary of localphone, LTD.

The Applicant stated in its proposed tariffs (reference Sections 2.5 and 2.6 of Arizona C.C. Tariff No. 1 and Sections 2.5.4 and 2.5.5 of Arizona C.C. Tariff No. 2) that it does not require deposits or advances from its long distance and long exchange service customers. In Voxbeam's proposed Arizona C.C. Tariff No. 3, in Sections 2.12.2 and 2.12.3, Voxbeam stated that it may require a deposit or advance payment from its access service customers.

4. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company indicating that its fair value rate base is zero. Accordingly, the company's fair value rate base is too small to be useful in a fair value analysis.

Voxbeam submitted its proposed Arizona C.C. Tariff No. 1, proposed Arizona C.C. Tariff No. 2, and proposed Arizona C.C. Tariff No. 3 to support its Application. Voxbeam also provided additional rate comparison information of other competitive local exchange carriers in the State of Arizona. Staff has reviewed the proposed rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. The rate to be ultimately charged by the Applicant will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value rate base information provided should not be given substantial weight in this analysis.

5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of Local Exchange service are discussed below.

5.1 NUMBER PORTABILITY

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

5.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.3 QUALITY OF SERVICE

In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that the Applicant should be ordered to abide by the same quality of service standards that were approved by the Commission for Qwest d/b/a CenturyLink QC ("CenturyLink") in Docket No. T-01051B-13-0199 (Decision No. 74208).

5.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

5.5 911 SERVICE

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission ("FCC") 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

5.6 CUSTOM LOCAL AREA SIGNALING SERVICES

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

6. REVIEW OF COMPLAINT INFORMATION

The Applicant has not had an Application for authority to provide service denied in any state. The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions filed against Voxbeam through July 15, 2014. Consumer Services also reports that Voxbeam is in Good Standing with the Corporations Division of the Commission. Further, a search of the Federal Communications Commission's ("FCC") website found that there have been no complaints filed against Voxbeam.

The Applicant indicated that none of its officers, directors or partners has been convicted of any criminal acts in the past ten (10) years. The Applicant also indicated that none of its officers, directors or partners has been involved in any civil or criminal investigations, or any informal complaints.

7. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

7.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES

7.1.1 **A description of the general economic conditions that exist, which make the relevant market for the service one that is competitive.**

The statewide local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service in areas previously served only by ILECs. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, will have to compete with those existing companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in areas served by independent ILECs.

7.1.2 **The number of alternative providers of the service.**

CenturyLink and various independent ILECs provide local exchange service in the State. CLECs and local exchange resellers are also providing local exchange service. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in portions of the independent ILECs' service territories.

7.1.3 **The estimated market share held by each alternative provider of the service.**

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink's Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

7.1.4 **The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

Voxbeam does not have any affiliates that are alternative providers of local exchange service in Arizona.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange service resellers, wireless carriers and VoIP service providers also offer substantially the same services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in rural areas of the state.
- b. One in which new entrants will be dependent upon ILECs and other CLECs:
 1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built.
 3. For interconnection.
- c. One in which existing ILECs and CLECs have had an existing relationship with their customers that the Applicant will have to overcome if it wants to compete in the market and one in which the Applicant will not have a history in the Arizona local exchange service market.
- d. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

7.2 COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES

7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that is competitive.

The statewide interexchange market that the Applicant seeks to enter is one in which numerous facilities-based interexchange carriers and resellers of interexchange service have been authorized to provide service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and VoIP providers. The Applicant will be a new entrant in this market and, as such, will have to compete with those existing companies in order to obtain customers.

7.2.2 The number of alternative providers of the service.

There are a large number of facilities-based interexchange carriers and resellers providing interexchange service throughout the State. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

7.2.3 The estimated market share held by each alternative provider of the service.

Facilities-based interexchange carriers, interexchange service resellers, independent ILECs, CLECs, wireless carriers and VoIP providers all hold a portion of the interexchange market.

7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

Voxbeam does not have any affiliates that are alternative providers of interexchange service in Arizona.

7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

Both facilities-based interexchange carriers and interexchange service resellers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs and CLECs offer similar interexchange services. The market the Applicant seeks to enter is also served by wireless carriers and VoIP service providers.

7.2.6 Other indicators of market power which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.
- d. One in which the share of the market held by wireless carriers has increased over time, while that held by wireline carriers has declined.

8. RECOMMENDATIONS

The following sections contain Staff recommendations on the Application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

8.1 RECOMMENDATIONS ON THE APPLICATION FOR A CC&N

Staff recommends that Applicant's Application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest d/b/a CenturyLink QC in Docket No. T-01051B-13-0199;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers and local incumbent carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;

8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void after due process.

1. The Applicant shall docket conforming tariffs pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.
2. The Applicant shall notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

8.2 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange service market where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.